

**N.D.A.G. Letter to Ficek (May 12, 1988)**

May 12, 1988

Mr. Vince H. Ficek  
City Attorney  
P.O. Box 866  
Dickinson, ND 58601-0866

Dear Mr. Ficek:

Thank you for your letter of April 25, 1988, regarding the proper destination of the funds originally transferred from the building reserve fund of the city of Dickinson to an escrow account for the purpose of being used as part of the financing for the proposed West River Dakota Dome project. The purpose of the escrow has apparently become impractical due to the defeat of a recent election proposing a home rule charter for the city of Dickinson. Presumably, the city wishes to return those funds to itself so that they might be spent for another purpose. You ask whether or not the funds in question must be returned to the building reserve fund or whether the city can utilize the funds for another purpose.

N.D.C.C. § 40-40-05(2)(c)(2) authorizes a city to have a separate fund known as a building reserve fund. Such fund constitutes a special fund of the city. The general rule is that special funds can only be used for the purpose for which they were appropriated. N.D.C.C. § 40-16-12; 15 McQuillin, Municipal Corporations 39.45 (3rd Ed. 1985). I would therefore agree with your interpretation that the money, once it is returned from the escrow fund, would have to be returned to the building reserve fund from which it originated.

While the city may or may not wish to reconsider the use of the funds in question, that use would be limited to the purpose as stated in N.D.C.C. § 40-40-05(2)(c)(2) which is for the purchase, construction, or reconstruction of buildings unless there was an emergency requiring transfer of the funds pursuant to N.D.C.C. § 40-40-18. Presumably the city, to redirect the use of the funds within the building reserve fund restrictions, can amend its 1988 budget pursuant to N.D.C.C. § 57-15-31.1 or consider the amount in its budget for 1989.

Sincerely,

Nicholas J. Spaeth

cv